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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013 - 565*

13 **DAVID LEE SILVA**  
3950 Via Real #156  
Carpinteria, CA 93013

**A C C U S A T I O N**

14 Registered Nurse License No. 289550

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., R.N. ("Complainant") brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing.

21 2. On or about March 31, 1978, the Board of Registered Nursing ("Board") issued  
22 Registered Nurse License No. RN 289550 to David Lee Silva ("Respondent"). The Registered  
23 Nurse License was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on March 31, 2014, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following  
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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## STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code...."

6. Section 2750 provides, that the Board may discipline any license, including a license holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

1       "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
2 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice  
3 Act] or regulations adopted pursuant to it.

4       ....

5       "(f) Conviction of a felony or of any offense substantially related to the qualifications,  
6 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
7 conclusive evidence thereof...."

8       8.     Section 2762 states, in pertinent part:

9       "In addition to other acts constituting unprofessional conduct within the meaning of this  
10 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
11 chapter to do any of the following:

12       ....

13       "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
14 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
15 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
16 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
17 ability to conduct with safety to the public the practice authorized by his or her license.

18       "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-  
19 administration of any of the substances described in subdivisions (a) and (b) of this section, or the  
20 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)  
21 of this section, in which event the record of the conviction is conclusive evidence thereof...."

22       "(d) Be committed or confined by a court of competent jurisdiction for intemperate use of  
23 or addiction to the use of any of the substances described in subdivisions (a) and (b) of this  
24 section, in which event the court order of commitment or confinement is prima facie evidence of  
25 such commitment or confinement."

26       9.     Section 2764 provides that the expiration of a license shall not deprive the Board of  
27 jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision  
28 imposing discipline on the license.

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1 with a tested blood alcohol level of 0.25/0.26%.

2 b. On or about November 28, 2005 after pleading nolo contendere, Respondent was  
3 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)  
4 [driving under the influence of alcohol] in the criminal proceedings *The People of the State of*  
5 *California v. Davis Lee Silva* (Super. Ct. Santa Barbara County, 2005, No. 1205967). The Court  
6 sentenced Respondent to 45 days jail, placed Respondent on 36 months probation, and ordered  
7 Respondent to complete an 18-month Multiple Offender Education and Counseling Program.  
8 The circumstances surrounding the conviction are that on or about September 19, 2005,  
9 Respondent was arrested for driving with a tested blood alcohol level of 0.26%.

10 c. On or about October 3, 2001 after pleading nolo contendere, Respondent was  
11 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)  
12 [driving under the influence of alcohol] in the criminal proceedings *The People of the State of*  
13 *California v. Davis Lee Silva* (Super. Ct. Santa Barbara County, 2005, No. 1072130). The Court  
14 sentenced Respondent to 60 days jail, placed Respondent on 36 months probation, and ordered  
15 Respondent to complete a 6-month Alcohol Program. The circumstances surrounding the  
16 conviction are that on or about September 4, 2001, Respondent was arrested for driving with a  
17 tested blood alcohol level of 0.29%. Respondent later violated the terms and conditions of his  
18 probation and was ordered to serve 10 days in jail for that violation.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Conviction of Alcohol Related Crimes)**

21 13. Respondent is subject to disciplinary action under Code sections 2761, subdivision (a)  
22 and 2762, subdivision (c), on the grounds of unprofessional conduct, in that on or about  
23 July 24, 2012, November 28, 2005, and October 3, 2001, Respondent was convicted of crimes  
24 involving the consumption of alcohol. Complainant refers to and by this reference incorporates,  
25 the allegations set forth above in paragraph 12, subparagraphs (a), (b) and (c), inclusive, as  
26 though fully set forth herein.

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**THIRD CAUSE FOR DISCIPLINE**

**(Dangerous and Intemperate Use of Alcohol)**

14. Respondent is subject to disciplinary action under Code sections 2761, subdivision (a) and 2762, subdivisions (b) and (d), on the grounds of unprofessional conduct, in that Respondent used alcohol to an extent or in a manner dangerous or injurious to himself or others and was confined by the Court for a total of 100 days in jail for the intemperate use of or addiction to alcohol. Complainant refers to and by this reference incorporates, the allegations set forth above in paragraph 12, subparagraphs (a), (b), and (c), inclusive, as though fully set forth herein.

**FOURTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct/Violation of Nursing Practice Act)**

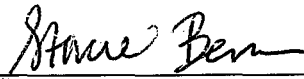
15. Respondent is subject to disciplinary action under Code sections 2761, subdivisions (a) and (d), in that Respondent committed acts of unprofessional conduct and/or violated the Nursing Practice Act. Complainant refers to and by this reference incorporates, the allegations set forth above in paragraphs 12- 14, inclusive, as though fully set forth herein.

**PRAAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License No. 289550, issued to David Lee Silva;
2. Ordering David Lee Silva to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: JANUARY 18, 2013

  
for LOUISE R. BAILEY, M.ED., R.N.  
Executive Officer  
Board of Registered Nursing  
State of California  
Complainant

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